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Veröffentlichungsversion / Published Version
Zeitschriftenartikel / journal article

Empfohlene Zitierung / Suggested Citation:

Sturanovic, P. (2018). Political parties and their influence on the parliamentary mandate after the fall of communism in Montenegro and Serbia. *Studia Politica: Romanian Political Science Review*, 18(3), 423-445. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-60029-6>

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Political parties and their influence on the parliamentary mandate after the fall of communism in Montenegro and Serbia

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Abstract

This article analyzes the relations between political parties and parliament, and the specific issue of the parliamentary mandate. It examines the issue of the increasing influence of political parties and how this causes the weakening of modern parliaments, and also changes the nature of the parliamentary mandate from a free to an almost imperative mandate. We focus on specific instruments political parties have developed to establish and maintain full control over their representatives. We look into the specific experience of Montenegro and Serbia and the way these countries have changed their political system during the transition from communism. Among other factors that influence the weakening of the parliament, we focus primarily on the electoral system. The current proportional electoral system (proportional with closed lists) in both countries causes a lack of legitimacy for the members of parliament (MPs), which is why we analyze the effects of an electoral reform in order to strengthen the position of MPs. The mechanism of the transition to a preferential proportional electoral system is analyzed, as well as the benefits and disadvantages of this kind of reform proposal.

Keywords: Montenegro, Serbia, parliamentary mandate, electoral system, EU integration.

Introduction

The main purpose of this article is to provide an answer to the question of how political parties influence the nature of the parliamentary mandate, and the power of the parliament in general, in post-communist countries such as Montenegro and Serbia. After a brief review of the theoretical literature that supports the thesis that the modern parliament is being marginalized, the argumentation takes issue with the electoral system, which is the main independent variable that affects the significance and activity of MPs and the power of parliament in general, as a dependent variable. Among other independent variables, this study examines the instruments and methods of

political parties through which they fight for the exercise of control over their MPs. Furthermore, EU integration is considered as another variable since it has led to a transfer of a large part of legislative competencies from the national to the European level, and it has also affected the balance of power between national parliaments and their governments in favour of national executives¹. Have political parties indeed reshaped the nature of the representative parliamentary mandate in transitional Montenegro and Serbia? Can we notice any changes over time in how political parties approach the fight for control over their MPs? What could be the effects of establishing a proportional electoral system with open lists on the autonomy of MPs and the strengthening of parliament? These are the fundamental questions that we set out to answer in this article.

From a methodological point of view, we use a case-study approach, which is the intensive study of a single unit for the purpose of understanding a larger class of (similar) units, where the unit connotes a spatially bounded phenomenon observed at a single point in time or over some delimited period of time². Our research framework involves the parliamentary regimes of both Montenegro and Serbia, and takes into account their progress towards European integration. Therefore, this case study can be useful to other countries facing similar challenges in this process. Besides, their situation reflects the problems in the functioning of parliaments in young democracies in the post-communist transition period. A further justification for this case study is the fact that certain instruments such as blank-form resignations and instances of violation of the constitution show how far parties are prepared to go in order to keep their influence on MPs. This article is divided into three sections. In the first section, we briefly present the theoretical framework concerning the importance and the power of parliament in the contemporary parliamentary system, in relation to the influence of political parties, government, and the process of integration. Secondly, the analysis focuses on the post-communist experience of Montenegro and Serbia with regard to the nature of the parliamentary mandate. The third section analyzes the possible effects of changes of the electoral system in response to the issue of the legislature's fading power, before offering some concluding remarks.

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¹ Katrin Auel and Arthur Benz, "The Politics of Adaptation: Europeanisation of National Parliamentary Systems", *Journal of Legislative Studies*, Vol. 11, No. 3-4, 2005, pp. 372-393, pp. 372-373.

² John Gerring, "What Is a Case Study and What Is It Good for?", *The American Political Science Review*, Vol. 98, No. 2, 2004, pp. 341-354, p. 342.

The Role Of The Modern Parliament In Consolidated Democracies: A Theoretical Overview

The modern parliament suffers from an increasing trend towards marginalization, and long gone is the time when it found itself at the centre of the political system. It is important to note, though, that historically the function of the parliament has always been overemphasized. For example, Walter Bagehot in his capital work “The English Constitution”, in addition to its legislative function and the function of forming government, mentions *the elective, expressive, teaching, informing functions* of parliament³. This trend towards degradation of the parliament was already recognized in the previous century. Even in societies with a substantial history of parliamentary democracy, the parliament has become increasingly marginalized in a world characterized by globalization, the appearance of many new, diverse policymaking areas, radical specialization, and an explosion of new, vigorous political agents, namely NGOs⁴. First and foremost, however, is the fact that the balance of power between the parliament and government has been disrupted. Philip Norton’s classification of legislatures identified: *Policy-making parliaments*, which can modify or reject measures brought forward by the executive, and can formulate and substitute policies of their own (e.g. a Member’s Bill); *Policy-influencing parliaments*, which can modify or reject measures brought forward by the executive but cannot formulate and substitute policies of their own; and *Parliaments with little or no policy effect*, which can neither modify or reject measures brought forward by the executive, nor formulate and substitute policies of their own⁵. Some parliaments are better prepared to face the challenge of marginalization. Legislatures with strong committees, such as the Nordic parliaments, the Italian Camera dei Deputati and the German Bundestag, are normally ranked as the most powerful in Europe. However, despite such investment in committee work, governments remain

³ Walter Bagehot, *The English Constitution*, Oxford, Oxford University Press, 1873, pp. 118–121.

⁴ Tom Burns and Masoud Kamali, “The Evolution of Parliaments - A Comparative, Historical Perspective on Assemblies and Political Decision-making”, Gerard Delanty, Engin F. Isin, and Margaret R. Somers (eds.), *Handbook of Historical Sociology*, London, Sage Publications, 2002, p. 16.

⁵ Philip Norton and Cristina Leston-Bandeira, *Parliamentary Institution - Basic Concepts*, United Nations Development Programme - Viet Nam, 2005, p. 6. Norton and Leston-Bandeira enumerate a number of criteria that contribute towards understanding the relationship between Executives and Legislatures: Size of government’s majority in parliament; number of parties in opposition, as well as the size of these parties; Level of party discipline; Average duration of governments; Government’s and parliament’s legislative powers; Legislative output; Scrutiny instruments available to parliament; Scrutiny instruments activated by parliament; Government’s and parliament’s powers in agenda setting. *Ibidem*, p. 10.

firmly in control of the parliamentary agenda and the passage of legislation⁶. Tsebelis argues that the interaction between the executives and legislatures is regulated by the rules of agenda setting. According to him, it is precisely through a revision of the agenda that the government establishes domination over parliament in the legislative sphere⁷. This describes Olson's '90% rule', that in most cases the 90% rule applies with 90% of legislative activity being initiated by the executive, which gets 90% of what it wants⁸.

Recent literature on parliaments refers to the process of integration as a factor that has affected the powers and the institutional position of national parliaments, through the transfer of legislative powers to the EU level⁹. Further, according to the so-called 'deparliamentarization' thesis, the development of European integration has led to the erosion of parliamentary control over the executive branch, which has made national parliaments the main victims of European integration¹⁰. Moravcsik identifies four causal mechanisms behind the growth of executive power: the executive monopoly over policy initiation; advantages enjoyed by executives by virtue of the legal form of EC decisions and the procedures by which they are ratified; superior access to EU-related information; justifications for government policies through the connection between European integration and the principled belief in the ideals of peace, prosperity and cosmopolitanism – the three most fundamental sources of "European" ideological legitimacy¹¹. However, there are variations in how national parliaments have reacted to EU integration. Factors that explain such heterogeneity include national path dependencies, the domestic institutional strength of national parliaments (or lack thereof), and the degree of

⁶ John O'Brennan and Tapio Raunio, "Introduction. Deparliamentarization and European Integration", John O'Brennan and Tapio Raunio (eds.), *National Parliaments within the Enlarged European Union: From 'victims' of integration to competitive actors?*, London and New York, Routledge, 2007, p. 8.

⁷ George Tsebelis, *Veto Players: How Political Institutions Work*, Princeton, Princeton University Press, 2002, p. 139.

⁸ David Olson and Philip Norton (eds.), "Legislatures in Democratic Transition", *Journal of Legislative Studies*, Vol. 2, No. 1, 1996, p. 7.

⁹ In the meantime, EU institutions and their decision-making procedures suffer from a lack of democracy, which Weiler, Haltern and Mayer call 'democratic deficit'. Joseph Weiler, Ulrich Haltern and Franz Mayer, "European Democracy and its Critique", *West European Politics*, Vol. 18, No. 3, 1995, pp. 4–39, p. 6. Ladrech argues that there is an additional dimension to the democratic deficit, one that is inside political parties. Robert Ladrech, "National Political Parties and European Governance: The Consequences of 'Missing in Action' ", *West European Politics*, Vol. 30, No. 5, 2007, pp. 945–960, p. 953.

¹⁰ Tapio Raunio, "The Gatekeepers of European Integration? The Functions of National Parliaments in the EU Political System", *Journal of European Integration*, Vol. 33, No. 3, 2011, pp. 303–321, p. 304.

¹¹ Andrew Moravcsik, "Why the European Union Strengthens the State: Domestic Politics and International Cooperation", *CES Working Paper Series*, No. 52, Centre for European Studies, Cambridge, 1994, pp. 1–79, pp. 15–25.

Eurosceptical opinion at national level¹². Thomas Winzen argues that European integration mostly affects and is affected by (1) parliamentary influence on legislation and (2) parliamentary links to citizens¹³. More recently, scholars have pointed to the dualist nature of Europeanization for MPs, which is both passive (Europeanization seen as something that simply happens to parliamentarians) and active (Europeanization considered as a process of adaptation or reaction of parliamentary behaviour to European integration¹⁴. According to Klaus Goetz and Jan-Hinrik Meyer-Sahling the integration process produces contradictory effects: *de-parlamentarisation*, as national parliaments have ceded powers to the EU and to domestic executives, and the opposite, i.e., *re-parlamentarisation*, as national legislatures have reasserted themselves in the integration process; *growing bureaucratisation*, as national bureaucrats dominate domestic EU-related policymaking, and the opposite, i.e., *politicisation*, as executive politicians take control of the EU policy process; *increasing centralisation* in national governments, with the emergence of powerful EU core executives, and the opposite, i.e., *progressive diffusion* of integration effects throughout the political and administrative parts of the executive¹⁵. Francesko Duina and Michael Oliver argue that the EU has also benefited national parliaments, mostly by setting legal precedents in areas previously beyond the remit of national parliaments, and they conclude that by so doing, the EU opens the door for unprecedented national legislative activity¹⁶. However, European integration cannot be blamed or praised for all temporal trends affecting national legislatures. Rather, it is the added effect of integration that needs to be focused on¹⁷.

According to Cristina Chiva, EU institutions, policies and norms shape legislative institutionalisation to the extent that the adaptive pressures of the EU accession process in candidate countries have an impact on (a) the wider context within which parliaments work (in particular the constitutional

¹² Gavin Barrett, *Evolving Role of National Parliaments in the European Union: Ireland as a case study*, Manchester, Manchester University Press, 2018, p. 55.

¹³ Thomas Winzen, "Political Integration and National Parliaments in Europe", *Living Reviews in Democracy*, Vol. 2, 2010, pp. 1–14, p. 1.

¹⁴ Sylvain Brouard, Olivier Costa and Thomas König, "Delors' Myth: The Scope and Impact of the Europeanization of Law Production", Sylvain Brouard, Olivier Costa and Thomas König (eds.), *The Europeanization of Domestic Legislatures*, New York, Springer, 2012, pp. 1–19, p. 3.

¹⁵ Klaus Goetz and Jan-Hinrik Meyer-Sahling, "The Europeanisation of National Political Systems: Parliaments and Executives", *Living Reviews in European Governance*, Vol. 3, No. 2, 2008, pp. 1–30, p. 5.

¹⁶ Francesko Duina and Michael Oliver, "National Parliaments in the European Union: Are There Any Benefits to Integration?" *European Law Journal*, Vol. 11, No. 2, 2005, pp. 173–195, p. 190.

¹⁷ Tapio Raunio and Simon Hix, "Backbenchers learn to fight back: European integration and parliamentary government", *West European Politics*, Vol. 23, No. 4, 2000, pp. 142–168, p. 145.

framework and the crystallisation of party ideologies) and (b) parliamentary agendas and structures (especially the quantity and contents of legislative output and the committee system¹⁸. The goal of many Eastern European states of joining the EU has also led to the adoption of fast-track legislative procedures, further reducing parliaments' independent input into the policy-making process¹⁹. The legislative bodies of candidate countries like Montenegro and Serbia are even more affected by the integration process. The organizations to which Montenegro and Serbia aspire to be members of, and above all else the European Union as the subject *sui generis*, influence the laws to be adopted and the dynamics of the legislative process, regardless of the fact that those organizations have sometimes been said to have a poor knowledge of Montenegrin or Serbian society²⁰. The key goal for their political elite²¹ in the process of EU integration was to enter as soon as possible. This further aggravated the existing degradation of the legislature and continually put unbearable pressure on parliament to incorporate the *acquis communautaire* in as short a time as possible²². Parliamentarians in Western parliamentary democracies can at times be very much united against a government, yet for all practical purposes they are far more accurately treated as multi-member assemblies divided into political parties who are either in government or in opposition. When a parliament acts by majority, and when that majority supports the government, then the theoretical government-versus-parliament duality quickly diminishes²³. Instead of this "old dualism", parliamentary systems are characterised by a "new dualism" between the executive and its supportive majority, on the one hand, and the parliamentary opposition, on the other. Party discipline depends on the content of the legal proposal. Particularly in EU affairs we can expect the motivation of the majority loyally to follow

¹⁸ Cristina Chiva, "The Institutionalisation of Post-Communist Parliaments: Hungary and Romanian Comparative Perspective", *Parliamentary Affairs*, Vol. 60, No. 2, 2007, pp. 187–211, p. 194.

¹⁹ Petr Kopecký, "Power to the Executive! The Changing Executive–Legislative Relations in Eastern Europe", *Journal of Legislative Studies*, Vol. 10, No. 2-3, 2004, pp. 142–153, p. 151.

²⁰ Boris Vukićević, Stevo Muk and Zlatko Vujović, *Study: Strengthening of the Role and Function of the Parliament of Montenegro in the Decision-Making Process*, Faculty of Political Science, University of Montenegro, Podgorica, 2012, p. 18.

²¹ Political parties in Montenegro wholeheartedly and without any exception support the country's European integration. Ivan Vuković, "The Determinants of Party Consensus on European Integration in Montenegro", *Croatian Political Science Review*, Vol. 52, No. 4-5, 2015, pp. 74–98, p. 82.

²² Petar Šturanović, *Zakonodavna nadležnost skupštine u savremenom parlamentarnom sistemu (Legislative Competence of the Assembly in Contemporary Parliamentary System)*, Službeni list, Podgorica, 2017, pp. 30–31.

²³ Philipp Kiiver, "European scrutiny in national parliaments", John O'Brennan and Tapio Raunio (eds.), *National Parliaments within the Enlarged European Union: From "victims" of integration to competitive actors?*, pp. 66–78, London and New York, Routledge, 2007, pp. 73–74.

their government to be indeed lower compared to what would be the case in domestic politics, since the agenda to be decided upon does not originate from a programme or manifesto agreed by the government and the majority parties²⁴.

In parliamentary democracy there is an upward chain of delegation from voters to parliaments and to governments, and a corresponding downward chain of accountability from the cabinet to the parliament and ultimately to the electorate²⁵. However, in modern parliamentarism, the constitution provides that the government is accountable to parliament, but in reality it is to the political parties, and more precisely to the party leaders, that the government is truly accountable. For example, in the early 1990s Margaret Thatcher was forced to resign from her Prime Minister position after she had lost the Conservative (Tory) Party leadership election. Despite the fact that Thatcher's government had a solid majority in the House of Commons at the time, she had to step down in favour of John Major, the new Tory leader. Once Major established control over the party, it was only a matter of time before he would become Prime Minister²⁶.

The main factor causing this marginalization of the modern parliament are political parties. Maurice Duverger argued that political parties changed the nature of parliamentarism and concluded that the one who understands classic constitutional law does not understand the essence of political parties, but the one who knows how political parties function, despite a lack of understanding of constitutional law, has an incomplete, but correct picture²⁷. Duverger's claim is proved correct, considering that political parties are becoming more and more the true centre of the decision making process, while MPs exercise the pure transmission of the political will of their party leaders. The greater the ability of a party to control the political future of its members in the legislature (through ballot access, funding resources, internal assignments or other critical benefits), the lower individual autonomy of the MPs will be²⁸. Parliament becomes a legislative body which votes for proposed laws which have already been previously negotiated. Political parties de facto decide whether a certain bill will become law, which inevitably leads to a reduced, merely finalizing legislative function of parliament²⁹.

²⁴ Katrin Auel, "Democratic Accountability and National Parliaments: Redefining the Impact of Parliamentary Scrutiny in EU Affairs", *European Law Journal*, Vol. 13, No. 4, 2007, pp. 487–504, pp. 491–492.

²⁵ Kaare Strøm, Wolfgang C. Müller and Torbjørn Bergman, *Delegation and Accountability in Parliamentary Democracies*, Oxford, Oxford University Press, 2003, pp. 64–65.

²⁶ David J. Samuels and Matthew S. Shugart, *Presidents, Parties and Prime Ministers: How the Separation of Powers Affects Party Organization and Behavior*, Cambridge, Cambridge University Press, 2010, p. 98.

²⁷ Duverger Maurice, *Political Parties: Their Organization and Activity in the Modern State*, London, Methuen, 1954, p. 387.

²⁸ Ammie Kreppel, "Typologies and Classifications", Shane Martin, Thomas Saalfeld and Kaare Strøm (eds.), *The Oxford Handbook of Legislative Studies*, pp. 82–101, Oxford, Oxford University Press, 2014, p. 94.

²⁹ Zoran Stojiljković, "Partije u parlamentu" ("Parties in Parliament"), Vukašin Pavlović and Slaviša Orlović (eds.), *Dileme i izazovi parlamentarizma (The dilemmas and challenges*

This is changing the nature of the MPs' mandate from a free representational to an imperative mandate bound by the orders from political parties.

The strength and the character of MPs depend on the nature of their mandate. An imperative mandate involves the right of the people to give binding instructions to their representatives, the right to demand reports of the representatives' work and the right to recall them. A number of constitutions, for example, the French Constitution of 1958, directly prohibit imperative mandates³⁰. The German Constitution takes a similar approach, stipulating that members of the Bundestag shall be representatives of the whole nation, that they shall not be bound by orders or instructions, and that they shall be responsible only to their conscience³¹. The imperative mandate has now become the exception, but this does not mean that it has completely disappeared. Indeed, it still exists in many developing countries such as Indonesia, Cuba, Fiji, Namibia and the Seychelles³². By contrast, the concept of the free representational mandate considers that the members' right to vote belongs to them alone; members represent the entire electorate; and MPs cannot be recalled. MPs are not representatives of only part of the population, which precludes them from defending special interests; MPs exercise their mandates freely and are not bound by any undertakings given before their election or instructions received from the voters during their mandate³³. In representative government, the central normative problem of democracy is often restated in terms of the relationship between citizens and *their* representatives: how closely must a representative's votes on legislation correspond to the preferences and will of his or her constituents?³⁴

The Montenegrin And Serbian Post-Communist Experience: The Nature Of The Parliamentary Mandate

This section examines the case of Montenegro and Serbia, two countries that were part of the former communist Yugoslavia and subsequently formed a common federal state in 1992 which was eventually dissolved after the Montenegrin referendum of 2006, when both countries became independent

of parliamentarism), pp. 129–139, Faculty of Political Science, University of Belgrade and Konrad Adenauer Stiftung, Belgrade, 2007, p. 107.

³⁰ “Any specific instruction to a Member of Parliament (from an outside body) is null and void.” French Constitution of 1958, article 27.

³¹ Basic Law for the Federal Republic of Germany, 1949, article 38.

³² Marc Van der Hulst, *The Parliamentary Mandate – A Global Comparative Study*, Inter-Parliamentary Union, Geneva, 2000, pp. 9–10.

³³ Olivier Duhamel and Yves Meny, *Dictionnaire Constitutionnel (Constitutional Dictionary)*, Paris, PUF, 1992, pp. 619–620.

³⁴ Andrew Rehfeld, “Representation Rethought: On Trustees, Delegates, and Gyroscopes in the Study of Political Representation and Democracy”, *American Political Science Review*, Vol. 103, No. 2, 2009, pp. 214–230, p. 214.

states. These two states are experiencing similar difficulties in transforming their institutions into democratic ones, mainly owing to the lack of a democratic tradition. Both started a democratic transition in the early 1990s³⁵, and like other socialist states, they did not practise any kind of separation of powers. Instead, they had a legislative body which was considered the highest political body of state power, legally superior to the executive, and judicial branches of government³⁶. In reality, they were practically governed by the single, omnipotent communist party. At the beginning of the transition to democracy, they chose parliamentarism over other types of organization of powers because every country leaving any kind of dictatorship had no practical choice other than parliamentarism³⁷.

In the following section, the focus will be on the relation between the parliament and political parties, particularly on the specific issue of the parliamentary mandate, because the relations between the legislative body and political parties were deeply affected by the nature of the mandate. Both Montenegro and Serbia had an imperative mandate, which was an integral part of the ruling communist ideology at that time. During the political transition of the 1990s, they chose the free representational mandate over the imperative one. However, by changing the imperative mandate into one which is only formally free, the essence has not changed: instead of the electoral base, it is the political party that has become the mandator³⁸.

The question is, how did political parties change the nature of the parliamentary mandate in Montenegro and Serbia? It could be argued that it primarily has to do with the electoral system that the parties have created through their MPs in order to achieve their own domination. Basically, electoral systems determine the means by which votes are translated into seats in the process of electing politicians into office³⁹. There are two main types of electoral systems, proportional and non-proportional. In proportional systems,

³⁵ A large number of former communist countries have passed through long and turbulent transitional processes, in which case it is more precise to talk about two transitions rather than a single one. This group of countries would include Romania, Slovakia, Croatia, Russia, Ukraine, Georgia, Montenegro and Serbia. Srđan Darmanović, "Duga tranzicija u Crnoj Gori – od polukompetitivnih izbora do izborne demokratije" ("Long transition in Montenegro - from semi-competitive elections to electoral democracy"), Veselin Pavićević (ed.), *Izbori i izborna zakonodavstvo u Crnoj Gori 1990–2006 (Elections and Electoral Legislation in Montenegro 1990–2006)*, pp. 83–100, CEMI, Podgorica, 2007, p. 83.

³⁶ Robert K. Furtak, *The Political Systems of the Socialist States*, New York, St. Martin's Press, 1986, p. 13.

³⁷ Giovanni Sartori, *Comparative Constitutional Engineering*, New York, New York University Press, 1997, p. 132.

³⁸ Petar Šturanić, *Zakonodavna nadležnost skupštine u savremenom parlamentarnom sistemu (Legislative Competence of the Assembly in Contemporary Parliamentary System)*, pp. 244–245.

³⁹ David Farrell, *Comparing Electoral Systems*, London, Palgrave Macmillan, 1998, p. 5.

great effort is made to ensure that the number of seats each party wins reflects as closely as possible the number of votes it has received. In other systems, greater importance is attached to ensuring that one party has a clear majority of seats over its competitors, thereby (hopefully) increasing the prospect of strong and stable government and, by extension, a stable political system⁴⁰.

Both Montenegro and Serbia have proportional electoral systems with *closed lists*, a different election threshold of 3% in Montenegro, and of 5% in Serbia, and a single nationwide constituency. Therefore, the proportionality coefficient is high, despite using the *D'Hondt electoral formula*, which is known as one of the least proportional electoral formulae⁴¹. However, the main feature of both Montenegro's and Serbia's electoral systems, as well as the main source of defects, are closed candidate lists. Such an electoral system has its advantages: to the party elite, which can draw up their lists in such a way as to maximize the chances for their preferred candidates to be elected; and clear advantages to the system wherever a party wants to increase its proportion of female MPs or, perhaps, to guarantee a minimum proportion of seats to ethnic minorities⁴². On the other hand, the proportional system (with closed lists) in existence in Montenegro and Serbia has clear disadvantages. Slaviša Orlović found that there are four fundamental deficiencies in the electoral model in Serbia (which also applies to Montenegro): territorial under-representation; fragmented parliament; semi-direct or semi-indirect electoral system comprising lists which are closed for the voters and open for the parties; imperative mandate and blank-form resignations⁴³.

The problem with national-level representation is that it reduces the contact between representatives and voters. There is a danger that the geographical location of MPs (either by birth or residence) may be concentrated in the urban, more populated areas, leaving whole swathes of the population unrepresented⁴⁴. In both countries, the current electoral model produces an uneven participation of certain territorial units. Urban areas are extremely over-represented compared to rural areas. In four Serbian legislatures from 2000 to 2008, an average of 100 municipalities did not have a single representative, although these municipalities count over 1,500,000 voters, a million of whom go to the polls. By contrast, 39.2% of MPs came from the territory of Belgrade and Novi Sad, while the share of voters in these two cities in the total electorate

⁴⁰ *Ibidem*.

⁴¹ Slobodan P. Orlović, "Kako do boljeg srpskog izbornog Sistema" ("How to Better Election System of Serbia"), *Collected Papers of the Faculty of Law, University of Novi Sad*, Vol. 48, No. 3, 2014, pp. 235 – 264, p. 249.

⁴² David Farrell, *Comparing Electoral Systems ... cit*, p. 73.

⁴³ Slaviša Orlović, "Izborni sistem i institucionalni dizajn" ("Electoral System and Institutional Design"), Zoran Stojiljković and Dušan Spasojević (eds.), *Preporuke za izmenu izbornog zakonodavstva u Srbiji (Recommendations for Amending the Electoral Legislation in Serbia)*, pp. 31–50, National Democratic Institute for International Affairs, Belgrade, 2011, pp. 45–46.

⁴⁴ David Farrell, *Comparing Electoral Systems ... cit*, p. 69.

was only 26.9%⁴⁵. In the previous Montenegrin legislature (October 2012–October 2016), there were no MPs from four smaller municipalities; by contrast, nearly half the members of parliament (40 of 81) came from the territory of Podgorica and Nikšić, although the share of voters in these two cities in the whole electorate was only 39%. In

both countries, there appears to be a constant, namely a strengthening of the place and of the role of political parties in the electoral process at the expense of the remaining stakeholders in the elections – voters, candidates, and state authorities. Thus, the parties give themselves the exclusive right to define the framework of individual rights and obligations of participants in the electoral process⁴⁶. Basically, such a system is susceptible to manipulation by political parties, and political parties in both countries control the entire process from the very beginning. In democracies where voters primarily identify with parties and/or where the electoral system gives the party the power to rank its candidates, the most important part of the electoral campaign for a potential candidate may be the party's pre-selection process – to secure pre-selection for a "safe" constituency or a winnable position on the party's list in a multi-member constituency⁴⁷. Candidate selection is not only relevant to the internal dynamics of parties; it also has significant implications for democracy at the level of the political system⁴⁸. In both Montenegro and Serbia, candidate selection is centralized in the hands of party leaders⁴⁹. The campaigns are centralized and party-oriented, while the central leadership controls the total funds⁵⁰. As political parties establish control of the process of nominating

⁴⁵ Milan Jovanović, "Redizajniranje izbornog sistema Srbije - jedan neuspeo pokušaj" ("Redesigning of the Electoral System in Serbia – A Failed Attempt"), Zoran Stojiljković and Dušan Spasojević (eds.), *Preporuke za izmenu izbornog zakonodavstva u Srbiji (Recommendations for Amending the Electoral Legislation in Serbia)*, pp. 21–30, National Democratic Institute for International Affairs, Belgrade, 2011, p. 26.

⁴⁶ Olga Popović-Obradović, Mijat Šuković and Veselin Pavićević, *Parlamentarizam u Crnoj Gori (Parliamentarism in Montenegro)*, CID, Podgorica, 2002, p. 185.

⁴⁷ Norm Kelly and Sefakor Ashiagbor, *Political Parties and Democracy in Theoretical and Practical Perspectives: Parliamentary Groups*, National Democratic Institute for International Affairs, Washington, 2013, p. 7.

⁴⁸ Scott Pruyers *et al.*, "Candidate Selection Rules and Democratic Outcomes", Susan E. Scarrow, Paul D. Webb, and Thomas Poguntke (eds.), *Organizing Political Parties: Representation, Participation, and Power*, pp. 208–233, Oxford, Oxford University Press, 2017, p. 210.

⁴⁹ Party discipline is likely to be highest where candidate selection is centralized in the hands of party leaders, lowest where selection is not controlled by party organs, and legislators are likely to be pulled in different directions where candidate selection remains in party hands but is decentralized. Michael Gallagher, "Introduction", Michael Gallagher and Michael Marsh (eds.), *Candidate Selection in Comparative Perspective: The Secret Garden of Politics*, London, Sage, 1988, pp. 1–19, p. 15.

⁵⁰ The national budget allocates 0.6%, whereas municipalities are obliged to allocate 1% of their budget for the work of parliamentary political parties. According to official data, the

candidates, they further expand their control. For example, in Serbia there was even a legal provision⁵¹ empowering each political party to decide which candidate would become a member of parliament regardless of his or her position on the electoral party list. In Montenegro, the corresponding legal provision was more “democratic”. Parties had the power to decide which candidates in the second half of the electoral list would become a member of parliament. If the party won 20 seats in the election, the first 10 were assigned automatically to the first 10 representatives from the electoral list of that particular party. The next 10 seats would then be assigned to representatives from the list according to the political party’s decision, regardless of the representative’s position on the list⁵². Vujović concluded that in the first 14 years of multi-partism in Montenegro, the party leaders: (1) controlled the process of candidate selection for MPs (2) determined who will become an MP from the candidate’s list regardless of the order on the list (3) indirectly deprived MPs of their seat by their exclusion from the party⁵³. To the best of their abilities, political parties have developed specific instruments for establishing and maintaining full control over their representatives, the so-called *blank-form resignation*. The blank-form resignation is a specific contract between a political party and a representative, member of that political party. Basically, after the elections, every party candidate elected on a party list signs an undated resignation letter and deposits it with the leaders of the political party which had placed him or her on that political party electoral list. In case of unpredictable parliamentary discussions or voting records against the party or the leaders’ particular interests, the party simply needs to fill in the date on the blank-form resignation and activate it. As a result of this practice, political parties produced weak, replaceable MPs, a practice which further weakened parliament and all of its functions.

The administrative committee of the Serbian parliament, controlled by political parties, bearing in mind party interests, legalized this practice through

share of private donations in the overall budget of political parties is insignificant. Zlatko Vujović, "The Impact of Personalization of Electoral System on Political Parties, The case of Montenegro", Zoran Stojiljković and Dušan Spasojević (eds.), *Voters, Parties, Elections – how to Democratize Political Parties in Montenegro and Serbia*, pp. 49–68, CEMI, Podgorica, 2016, pp. 58–59.

⁵¹ Law on the election of deputies, article 84, (Official Gazette of the Republic of Serbia, no. 35/2000, 57/2003, 75/2003, 18/2004, 101/2005, 104/2009, 28/2011.)

⁵² Vladimir Goati, “Parlamentarizam i partijski sistem Srbije” (“Parliamentarism and the Party System of Serbia”), Vukašin Pavlović and Slaviša Orlović (eds.), *Dileme i izazovi parlamentarizma (The Dilemmas and Challenges of Parliamentarism)*, pp. 129–139, Faculty of Political Science, University of Belgrade and Konrad Adenauer Stiftung, Belgrade, 2007, p. 130.

⁵³ Zlatko Vujović, Nikoleta Tomović, “Perspectives for Development of Intra-Party Democracy in Montenegro”, Milan Jovanović (ed.), *Comparative Balkan Politics*, Vol. 2, No. 1, pp. 43–65, CEMI, Podgorica, 2016, p. 56.

accepting blank-form resignations regardless of the Constitutional Court decision from 2003 that guaranteed members of parliament the freedom to represent the people, without any legally binding party orders⁵⁴. However, political parties established absolute dominance in a definitely original way – inserting in the new Constitution of 2006 a provision that allows a representative the ‘freedom’ to sign a blank-form resignation⁵⁵. Such a provision was criticized by scholars. Marković argued that it concentrates great power in the hands of party leadership and violates the three principles that form the basis of representative democracy: that MPs represent voters and that their mandate is the relationship between voters and them; that MPs vote on their own conviction; that MPs cannot be revoked⁵⁶. By bringing political parties into an open and unacceptable legal position to dispose of a parliamentary mandate, there is a justifiable risk of usurping power by taking over the role of the electorate and gaining sovereignty from citizens⁵⁷. Goati concluded that in such circumstances, MPs were turned into temporary and replaceable holders of the party imperative mandate⁵⁸. Quoting the replaceability of MPs, Orlović concluded that the political party actually

⁵⁴ The Constitutional Court of the Republic of Serbia declared unconstitutional the provisions of article 88 of the *Law on the election of national deputies*. According to the Law, the mandate of a representative stops if his membership of a political party (or coalition from whose list he is selected) is terminated, or if the party is deleted from the register of the political parties or political organizations from whose list he is selected. The Constitutional Court held that an MP has a constitutionally guaranteed freedom in representing those who elected him and cannot be bound by legally binding party orders. Given that being a member of a political party is not a condition for the exercise of passive suffrage, a member cannot lose the achieved passive suffrage even if his party membership is terminated, due to a disagreement with the Constitution in art. 13 and 42. Regardless of the mode of running under the Constitution, the candidate acquires the status of MP by citizens’ choice (article 74, paragraph 2), and from that moment becomes a representative of the citizens (article 76 of the Constitution) through which citizens exercise their sovereign rights (pursuant to article 2 position 2. Constitution). Making the mandate dependent on membership of a political party is not in compliance with the provisions of art. 2, 13, 44 of the Constitution, which guarantee freedom of political action. Decision of the Constitutional Court of Serbia, IV-197/2002, of 27. V 2003, (Official Gazette of the Republic of Serbia, no. 57/2003).

⁵⁵ “Under the terms stipulated by the Law, a deputy shall be free to irrevocably put his/her term of office at disposal to the political party upon which proposal he or she has been elected a deputy.” Constitution of Serbia of 2006, article 102, paragraph 2.

⁵⁶ Ratko Marković, *Ustavno pravo (Constitutional Law)*, Službeni glasnik, Belgrade, 2010, p. 246.

⁵⁷ Irena Pejić, “Koncept narodnog predstavništva i kontradikcije o parlamentarnom mandatu u srpskom ustavu”, (“Concept of National Representation and Contradictions on the Parliamentary Mandate in the Serbian Constitution”), *Nova srpska politička misao*, Belgrade, 2007, pp. 3-8, p. 4.

⁵⁸ Vladimir Goati, *Političke partije i partijski sistemi (Political Parties and Party Systems)*, Faculty of Political Science, University of Montenegro, Podgorica, 2008, p. 117.

became a representative of voters' interests and the most direct participant in the legislative process⁵⁹. Finally, blank-form resignations were shelved in 2011 by changing the existing law regulating the electoral system⁶⁰. Political parties had lost legal control over their representatives and were trying to establish the moral obligation for MPs to return the mandate to the party in case the party requested it.

Montenegro had a somewhat similar experience. Despite the fact that Montenegro proclaimed the concept of the free representational mandate in the Constitution of the Republic of Montenegro of 1992⁶¹, it still allowed the possibility for the existing imperative mandate to be brought back through the back door in the period 1995–2004, when parliament passed amendments to the *Law on the election of councillors and representatives*, allowing political parties to own the mandate of representatives, also allowing the party to exclude an MP from parliament if he or she left the party itself⁶². This translates into MPs automatically losing their mandate when they decide to leave the party (voluntarily or by expulsion). This controversial situation was resolved by a decision of the Constitutional Court⁶³. Under this decision, members of

⁵⁹ Slobodan P. Orlović, *Načelo podele vlasti u ustavnom razvoju Srbije (The principle of the Division of Power in the Constitutional Development of Serbia)*, Faculty of Law, University of Belgrade, 2008, p. 158.

⁶⁰ Petrov considered it inappropriate. "The attempt to correct a bad constitutional provision by law is to undermine the dignity of the Constitution and the principles of the free parliamentary mandate". Vladan Petrov, "Zakon o izmenama i dopunama zakona o izboru odbornika i poslanika od 2011 – Da li je poslanički mandat konačno slobodan?" ("The Law on Altering and Amending the Law on Election of Deputies of 2011 – Is the Mandate of Deputy Finally Free?"), Oliver Nikolić and Vladimir Đurić (eds.), *Izbori u domaćem i stranom pravu (Elections in Domestic and Foreign Law)*, pp. 94–106, Institute of Comparative Law, Belgrade, 2012, p. 105.

⁶¹ "Every deputy shall decide and vote according to his own belief and may not be recalled." Constitution of the Republic of Montenegro of 1992, article 77, paragraph 3.

⁶² "The term of office of councilor and/or representative shall be terminated before its expiry in the case of termination of membership in a political party on whose list he was elected." Law on Amendments to the Law on Election of Councillors and Representatives, (Official Gazette of the Republic of Montenegro, no. 16/95, article 104, paragraph 8).

⁶³ The Montenegrin Constitutional Court found that the Law does not comply with article 77 of the Constitution of the Republic of Montenegro, stipulating that members of parliament vote according to their own conscience and that they cannot be recalled, as well as with article 107 of the Constitution, stipulating that the law must be in conformity with the Constitution. Since neither the Constitution, nor the Law provides for membership of a political party as a condition for election candidacy, the loss of such a status cannot be grounds for termination. An MP is a representative of all the citizens and not of the party which nominated him. This disputed provision is not in accordance with article 3 of the Constitution, which stipulates that sovereignty belongs to the people, who exercise power directly and through freely chosen representatives. Therefore, the representative whose membership of a political party was terminated, may result in his having political or moral

parliament were to keep their seat even if the party revoked their membership. Unlike Serbia, though, Montenegro did not practise blank-form resignation and there was no violation of the Constitutional Court's decision. Although the current Constitution of 2006 provides a free mandate, Pajvančić claims that the decisive influence of the parties on the distribution of the mandate, as well as on MPs' freedom of making decision, reshapes the nature of the mandate⁶⁴.

Besides, the fact that a parliamentary seat belongs to an individual MP – not to the party (which was confirmed by the decisions of the Constitutional Courts of both countries), further compounds the problem. When voting for the party list, more precisely for the party leaders, people incidentally choose as their representatives certain members of parliament without considering them personally or even knowing who they are. When representatives, elected this way, change political parties or become independent MPs, they keep their seats despite a lack of legitimacy. As a result of this practice, nearly 20% of MPs (15 out of 81) from the previous Montenegrin legislature were either independent members, or MPs that changed party affiliation. Although this mainly resulted in a fragmentation of the opposition and did not cause a change in the ruling majority, it has been shown that such a situation can undermine the legitimacy of the entire parliament⁶⁵. The situation is compounded when we consider that in parliament we have representatives of political parties which did not take part in the election process, or even exist on election day (so-called 'unelected representation')⁶⁶. In the period from 2003 to 2005, there were four such cases recorded in Serbia. This is how the Serbian Renewal Movement returned to parliament after its collapse in the elections, as well as the newly established Group 17, the Liberal Democratic Party and the Strength of Serbia Movement⁶⁷. Members of parliament become vulnerable to the influence of big business, which believes that it is appropriate to exercise their business interests through

responsibility, but not in a legal sanction of revocation of the mandate because it was not constitutionally prescribed. Decision of the Constitutional Court of Montenegro, no. 14/04, of 18. VI 2004, (Official Gazette of the Republic of Montenegro, no. 45/2004).

⁶⁴ Marijana Pajvančić, "Parlamentarni sistem, unapređenje i modernizacija kompetitivnosti – ekspertska vizija" ("Parliamentary system, improvement and modernization of competitiveness - expert vision"), Mijat Šuković (ed.), *Crna Gora u XXI stoljeću – u eri kompetitivnosti, (Montenegro in the 21st Century - in the Era of Competitiveness)*, pp. 167–212, CANU, 73/5, Podgorica, 2010, p. 176.

⁶⁵ Petar Šturanović, *Zakonodavna nadležnost skupštine u savremenom parlamentarnom sistemu, (Legislative Competence of the Assembly in Contemporary Parliamentary System)*, p. 247.

⁶⁶ Bogoljub Milosavljević, "Teorija političkog predstavnštva i poslanički mandate" ("Theory of Political Representation and the Parliamentary Mandate"), *Pravo i Politika*, Vol. 4, No. 1, 2011, p. 22.

⁶⁷ Zoran Stojiljković, "Političke partije i demokratija" ("Political Parties and Democracy"), Zoran Stojiljković (ed.), *Politička sociologija savremenog društva (Political Sociology of Contemporary Society)*, pp. 291–369, Zavod za udžbenike, Belgrade, 2014, p. 323.

MPs, whether the MPs belong to the ruling party or to the opposition. A certain MP obviously did not hesitate to exercise the power of the “financial argument” and left the political party whose electoral list he belonged to (the SPS, *Socialist Party of Serbia*) to become the first representative of the Strength of Serbia Movement, which was founded by Bogoljub Karić, a well-known millionaire. This case was followed in 2008 by a split in the SRS, (*Serbian Radical Party*), when the future head of state Tomislav Nikolić took with him other 19 members of the Serbian Radical Party and established the parliamentary group “Forward, Serbia”; although the current ruling party *Serbian Progressive Party – SNS* (which was represented by that group then) still did not participate in the elections. The first legislature after the final establishment of a free mandate in 2011 (which lasted only two years: 2012–2014) saw the election of 11 deputies who changed party affiliation. In these circumstances, Norton's claim that “although there is a sense that MPs should have more autonomy – the reality is that party control is much ‘safer’ for the working of democracy”, seems justified⁶⁸.

The effects of an electoral reform on the parliamentary mandate in Serbia and Montenegro

Three elements combine to shape the nature of the legislative system and the legislative capacity of the assembly: (1) the constitutional rules, particularly the nature of the electoral system; (2) the structure of the legislature, whether unicameral or bicameral; (3) the enactment procedures, which include such matters as “agenda control” and the existence of minority veto provisions⁶⁹. The electoral system has to be a tool which transfers the people's political will to their representatives in parliament and a mechanism which largely determines not only the party system⁷⁰, but also the strength of the representatives. In this sense, we could reflect on the effects in both Montenegro and Serbia of an electoral reform which would give MPs the legitimacy they lack, enabling the entire parliament to function as a truly representative and legislative body.

⁶⁸ Philip Norton and Cristina Leston-Bandeira, “The Impact of Democratic Practice on the Parliaments of Southern Europe”, *Journal of Legislative Studies*, Vol. 9, No. 2, 2003, pp. 177–185, p. 178.

⁶⁹ David Arter, “Introduction: Comparing the Legislative Performance of Legislatures”, *Journal of Legislative Studies*, Vol. 12, No. 3–4, 2006, pp. 245–257, p. 249.

⁷⁰ In that sense, Maurice Duverger defines three basic laws: 1. Proportional representation tends to lead to the formation of many independent parties. 2. The two-ballot majority system tends to lead to the formation of many parties that are allied with each other. 3. The plurality rule tends to produce a two-party system. Maurice Duverger, “Duverger's Law: Forty Years Later”, Bernard Grofman and Arend Lijphart (eds.), *Electoral Laws and their Political Consequences*, pp. 69–84, Agathon, New York, 1986, p. 70.

However, electoral reforms are prone to face problems, but these could be reduced by taking into consideration the structure of cleavages in society, as well as tradition and history⁷¹. A number of proposals for electoral reform have already been put forward, all of which however might have negative long-term effects. For example, in order to achieve a stronger connection between MPs and voters, Jovanović proposed either a majority system or a personalized proportional system with several constituencies⁷². Živković proposed preserving a proportional electoral system, but with several smaller constituencies, with an electoral census of 10%⁷³. Pejić proposed changing the electoral system by introducing a mixed model combining the majority election system and the proportional representation system, and increasing the electoral census for coalition lists⁷⁴. Regarding the possible effects of an electoral reform on the party system, Orlović believes that a fragmentation of parliament could be avoided by the introduction of some kind of majority or mixed-member system⁷⁵. Besides the gerrymandering issue⁷⁶, such a radical change could potentially create a much more serious problem to worry about. Creating constituencies could be a step forward to some kind of eventual territorial autonomy. We may assume that every minority group, whether ethnic majority or religious majority (in states with a high degree of ethnic and religious diversity)⁷⁷, and also political parties that represent their

⁷¹ Giovanni Sartori, *Comparative Constitutional Engineering...cit.*, p. 147.

⁷² Milan Jovanović, "Redizajniranje izbornog sistema Srbije - jedan neuspeo pokušaj" ("Redesigning of the Electoral System in Serbia – A Failed Attempt"), p. 29.

⁷³ Miroslav Živković, "Izborni sistemi i reforma izbornog sistema u Republici Srbiji" ("Electoral Systems and the Reform of Electoral System of the Republic of Serbia"), *Megatrend Review*, Vol. 14, No. 7, 2017, pp. 107–116, p. 114.

⁷⁴ Irena Pejić, "Fundamental Values in New Democracies: The Principle of Representation in Serbian Constitution", *Collected Papers of the Faculty of Law, University of Niš*, Vol. 8, No. 67, pp. 169–184, p. 180.

⁷⁵ Slaviša Orlović, "Političke posledice izbornog sistema u Srbiji" ("Political Consequences of the Electoral System in Serbia"), *Politički život*, No. 4, pp. 19–36, p. 34.

⁷⁶ This refers to the practice in which constituency boundaries are redrawn with the intention of producing an inflated number of seats for a party, usually the governing party. The term "gerrymander" came from the shape of a constituency designed by Governor Elbridge Gerry of Massachusetts in 1812. It was so long, narrow and wiggly that one journalist thought it looked like a salamander, and it was accordingly dubbed a gerrymander. David Farrell, *Comparing Electoral Systems*, pp. 8–9.

⁷⁷ Montenegro is a country with a highly heterogeneous population, with no clear ethnic majority. According to the 2011 population census, 44.98% of the population declare themselves as Montenegrins. Among the others, most numerous are Serbs (28.73%), Bosniaks (8.65%), Albanians (4.91%) Muslims (3.31%), Roma (1.01%), and Croats (0.97%). Statistical Office of Montenegro, "Census of Population, Households and Dwellings in Montenegro", Podgorica, 2011. Serbia is also ethnically diverse, with more than twenty national minorities. Among them, the most numerous are Hungarians (3.53%), Roma (2.05%), Bosniaks (2.02%) Albanians (approx. 0.82%), and Croats (0.81%). Except for the Roma, other national minorities are territorially concentrated in

interests, would see that as an opportunity for raising a number of other issues. To start off with, they could request specific constituencies in the part of the country where minorities are dominant, and they could then use this as an argument for reaching autonomy for some newly established region in the future, or even for secession in the long run⁷⁸. Considering previous disintegration processes, it seems extremely likely that neither country would handle such claims properly. The mixed-member proportional system is a combination of proportional system and plurality system where people have two votes: one for a constituency MP and one for a party list. Although the mixed-member proportional system integrates the strengths of both the proportional and the plurality systems, it also produces a hybrid that combines their disadvantages. For a number of reasons, it seems reasonable to believe that a plurality electoral system, or any kind of electoral system that includes establishing multiple single-member constituencies, such as the mixed-member proportional system, would probably not be appropriate for either Montenegro or Serbia. First of all, any former communist society is likely to be unprepared for the major disproportion between cast votes and mandates, which is the main characteristic of the plurality system. One could therefore speculate that such a system would in the beginning reinstate one extremely strong party and discard a large number of votes, and it would be characterized by a lack of political alternative and unrepresented interests, which would also be the result if the election census was raised.

As Lijphart makes clear, very few countries have replaced the proportional electoral system with the plurality electoral system or vice versa because tradition is extremely important in what concerns the electoral system⁷⁹. If the electoral system prioritizes proportionality, a high degree of voter participation, and personal accountability of MPs, then the choice will gravitate towards an open-list⁸⁰. An efficient electoral system for a representative democratic government must include appropriate rules for both

particular regions or municipalities in Serbia. Most of the minority groups are politically organized around their "own" minority political parties. Jelena Lončar, "Electoral Accountability and Substantive Representation of National Minorities: The Case of Serbia", *East European Politics and Societies and Cultures*, Vol. 30, No. 4, 2016, pp. 703–724, p. 708.

⁷⁸ With the advancement of Albanian nationalism after the partial recognition of Kosovo, and then taking a stronger role in Macedonia (after forming a government in 2017 which significantly modified the course of its foreign policy), there is a possibility that the Albanian minority of Montenegro may push more strongly for some kind of autonomy. Boris Vukićević, "Foreign Relations of Post-Independence Montenegro: A Change of Direction", *Lithuanian Foreign Policy Review*, Vol. 36, 2017, pp. 107–135, p. 121.

⁷⁹ Arend Lijphart, *Patterns of Democracy*, New Haven, Yale University Press, 1999, p. 171.

⁸⁰ Michael Gallagher, "Conclusion", Michael Gallagher, Paul Mitchell, (eds.), *The Politics of Electoral Systems*, pp. 535–578, Oxford, Oxford University Press, 2005, p. 575.

party representation and *personal representation*⁸¹. Therefore, accepting open lists as a way to personalize the existing electoral system could be an effective solution to bring back legitimacy to parliament and their MPs. *Preferential voting* gives the voter a high degree of influence over the electoral process, making election more personal. Open lists allow voters to control the selection process depending on the number of preferences that are given to the voters themselves. Open lists will produce intra-party competition where candidates will find that they can attract more preference votes by staking out a distinct position from their co-partisans, which will develop more ideas and policies. On the other hand, Pejić wonders who will agree to a candidacy in a closed list system that does not have any prospect of success, unless there are some real benefits or unless perhaps they are pressurized or blackmailed?⁸² Under a closed-list system, for example, MPs seem to be entirely dependent upon their party's candidate selectors and could afford to disregard the voters, but under an open-list system, MPs need personal support from the voters and can be expected to be very responsive to them and to be active in locally related activities⁸³.

The MPs' affiliation to a certain party has been shown to be a decisive factor in his/her actions whenever a bill is brought forward and that is to a large extent a reflection of the electoral system⁸⁴. Preferential voting entails a high legislative turnover. The possibility of rewarding or punishing individual legislators leads to more legislators being voted out and newcomers being voted in than in a system without preferential voting⁸⁵. Carroll and Nalepa argue that MPs who win particularly large vote shares will be more costly to discipline. Since they cannot be credibly punished without harming party performance, they should be subject to discipline less often, which will lead to their greater disloyalty on average compared to those MPs who secure fewer votes (who can thus be more easily subject to discipline)⁸⁶. In the specific context of the European Parliament, Simon Hix found that in systems with open list PR, large

⁸¹ Josep M. Colomer, "Introduction: Personal and Party Representation", Josep M. Colomer (ed.), *Personal Representation: The Neglected Dimension of Electoral Systems*, Colchester, ECPR Press, 2011, pp. 1–19, p. 12.

⁸² Irena Pejić, "Izborna lista u srazmernom predstavljanstvu – iskustvo Srbije" ("The Electoral List in Proportional Representation – The Serbian Experience"), Oliver Nikolić and Vladimir Đurić (eds.), *Izbori u domaćem i stranom pravu (Elections in Domestic and Foreign Law)*, pp. 76–92, Institute of Comparative Law, Belgrade, 2012, p. 88.

⁸³ Michael Gallagher, "Conclusion", p. 557.

⁸⁴ Boris Vukićević, "Legislative function of the Parliament of Montenegro", Slaviša Orlović (ed.), *Comparative Analysis of Democratic Performances of the Parliaments of Serbia, Bosnia and Herzegovina and Montenegro*, pp. 121–138, Faculty of Political Science, University of Montenegro, Podgorica, 2012, p. 136.

⁸⁵ Richard Katz, *A Theory of Parties and Electoral Systems*, Baltimore, John Hopkins University Press, 1980, p. 34.

⁸⁶ Royce Carroll and Monika Nalepa, "When do Open Lists Matter? The Consequences of the Personal Vote for Party Loyalty", *SSRN Electronic Journal*, 2013, pp. 1–28, p. 19.

districts, or decentralized candidate selection, MEPs are more independent agents and hence are freer to vote with their European party groups and against their national parties.⁸⁷ Thus, preferential voting would loosen an excessively tight connection between the MP and the political party to which he or she belongs⁸⁸. MPs elected this way could leave the party and keep their seats without the question of lacking legitimacy. There would be no reason to worry that voters' preferences and political will could be lost between parties and MPs. Preferential voting would increase the political visibility of candidates, and also reward personal qualifications of candidates and MPs who fulfil their tasks effectively. MPs would keep close contact with their constituencies in order to secure their re-election⁸⁹. Preferential voting would reduce the problem of fragmented parliament⁹⁰ through the elimination of minor parties who were able to gain parliamentary status by coalition with the main parties.⁹¹ Even candidates themselves believe that some sort of preferential voting system would be better for the development of democracy⁹². Despite difficulties in providing exact figures, it is safe to say that varieties of preferential voting are common among countries using a proportional list system. Their stronghold is Western Europe, from where they have spread to some newer democracies on the European continent⁹³. The preferential proportional electoral system is used in other countries in the region, such as Croatia, which is a member of the EU.

Moving from less accountable systems (such as closed-list) to more accountable ones (such as open-list) is always likely to be acceptable to the voters, but lack of political will from the parties might prove a major obstacle. In such new circumstances, it can be expected that political parties will adopt a

⁸⁷ Simon Hix, "Electoral Institutions and Legislative Behavior – Explaining Voting Defection in the European Parliament", *World Politics*, 56(2), 2004, pp. 194–223, p. 219.

⁸⁸ Petar Šturanović, *Zakonodavna nadležnost skupštine u savremenom parlamentarnom sistemu*, (*Legislative Competence of the Assembly in Contemporary Parliamentary System*), p. 246.

⁸⁹ Carmen Ortega Villodres, "Preference Voting Systems and their Impact on the Personalisation of Politics", *Comparative studies of electoral systems meeting (CSES)*, Sevilla, 2006, p. 22.

⁹⁰ In Serbian legislature 2012–2014, there were as many as 45 political parties. Slobodan P. Orlović, "Kako do boljeg srpskog izbornog Sistema" ("How to Better Election System of Serbia"), p. 254.

⁹¹ Petar Šturanović, *Zakonodavna nadležnost skupštine u savremenom parlamentarnom sistemu*, (*Legislative Competence of the Assembly in Contemporary Parliamentary System*), p. 247.

⁹² Zoran Stojiljković and Srđan Darmanović, "Electoral System and Intra-Party relations in Montenegro and Serbia", Zoran Stojiljković and Dušan Spasojević (eds.), *Voters, Parties, Elections – how to Democratize Political Parties in Montenegro and Serbia*, pp. 125–142, CEMI, Podgorica, 2016, p. 130.

⁹³ Lauri Karvonen, "Preferential Vote in Party List", Josep M. Colomer (ed.), *Personal Representation: The Neglected Dimension of Electoral Systems*, pp. 118–132, ECPR Press, Colchester, 2011, p. 120.

different approach in order to be able to retain the power to influence the voters' preferences. In this sense, the Italian experience in manipulating preferential voting serves as an example.⁹⁴ Some initial difficulties might arise with vote counting and with the distribution of mandates at the end of the election process. However, these difficulties concern mere technical issues and seem negligible compared to the positive effects that such an electoral reform would generate.

Conclusion

In the past two centuries, institutions have gone through phases of change in their functioning. In the process of evolution of parliamentarism, fluctuations in the strength of the representative body were inevitable. However, what has been of great concern to many researchers in the field more recently is the intensity of the process which harms parliament and threatens to marginalize the legislative body completely and to reduce it to a mere formality. The present paper has applied the theoretical framework of the literature that supports the thesis that the modern parliament is being marginalized, to the cases of the Montenegrin and Serbian legislatures as ex-communist countries without a strong parliamentary tradition, where the challenges facing modern parliament are even greater. In these countries the main difference with the previous one-party system is that instead of one oligarchy, there are several party oligarchies that have a crucial influence on the personnel composition of the representative body, so that we now have "monism within pluralism"⁹⁵. In the light of the extensive literature review and the case study analysis undertaken in this paper, the general conclusion seems to be that political parties, which dominate parliamentary procedures and the political process, have reshaped the nature of the representative parliamentary mandate in transitional Montenegro and Serbia. It was found that parties have taken control of the process of candidate selection for MPs, centralized the campaigns, established full control over their MPs through blank-form resignation and violated decisions of the Constitutional Court. Therefore, as Orlović remarks, parliament with politically inferior

⁹⁴ Since each Italian voter was allowed three preferential votes, which could be expressed by writing the number of the candidate on the list, this became a way to identify and control the vote. Political parties gave each voter a different combination of these three numbers in order to check how they voted. Such a mechanism was created by the Communist Party and accepted by the other parties soon after. Giovanni Sartori, *Comparative Constitutional Engineering*, pp. 34–35.

⁹⁵ Veselin Pavićević *et al*, *Izbori i izborna zakonodavstvo u Crnoj Gori 1990–2006* (*Elections and Electoral Legislation in Montenegro 1990–2006*) CEMI, Podgorica, 2006, p. 52.

representatives, practically unelected from the people, has turned into a government servant⁹⁶. The literature has also pointed out that the EU integration process has further weakened the national parliaments of both the Member States and of Montenegro and Serbia.

The meaning of representative democracy, as enshrined in the Montenegrin and Serbian Constitutions, is that voters' sovereignty is transferred to their representatives (MPs) and not to political parties. As Goati, Pejić and Vujović have argued, the existing electoral system (proportional with closed lists) has many weaknesses and produces members of parliament that are political parties' soldiers instead of citizens' representatives. In such circumstances, it could prove profitable to retain the fairness of the proportional system and to improve it by revitalizing relations between MPs and the citizens who elect them, through preferential voting. It is to be hoped that stronger relations between voters and their representatives would restore the missing legitimacy to MPs, who would then be able to practice the free mandate, unbound by anybody's instructions or demands. Their political careers would be in the hands of the people, not in the hands of the leaders of the political parties, so representatives would not have to be obedient to the party and their leadership for fear of not being re-elected as members of parliament. Such a system would enable a greater degree of voters' influence on the personnel composition of parliament to encourage greater activity and responsibility of MPs during their mandates. As Farrell makes abundantly clear, candidate-based electoral systems, and particularly those, which facilitate preferential voting, provide greater scope for voters to act strategically when voting; they also help to tie the politicians into a closer relationship with their voters, encouraging closer attention to constituency work⁹⁷.

Some scholars argue that the EU integration process can contribute to the democratization of political parties, saying that it is plausible to expect that parties in new EU Member States will have experienced less change than their counterparts in long-standing Member States. However, this may only be the case in countries where parties are strongly institutionalized; parties in post-communist countries may adapt particularly quickly to the systemic imperatives of European multilevel governance because they tend to lack strong organizational and ideological traditions⁹⁸. The comprehensive survey presented in this article contributes to the study of the post-communist parliamentary regimes of South Eastern Europe, particularly those of the countries that are on

⁹⁶ Slobodan P. Orlović, "Kako do boljeg srpskog izbornog sistema" ("How to Better Election System of Serbia"), p. 251.

⁹⁷ David Farrell, *Comparing Electoral Systems*, p. 168.

⁹⁸ Thomas Poguntke *et al.*, "The Europeanisation of national party organisations: A conceptual analysis", *European Journal of Political Research*, Vol. 46, No. 6, 2007, pp. 747–771, p. 753.

the path to EU integration. Finally, it points the way for politically important lines of future research. In particular, how much has the desire of the candidate countries to adopt the *acquis communautaire* as soon as possible, with the aim of faster accession to the European Union, caused a weakening of the legislative function of the parliament?